IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 3072 of 1983
Date of decision: 16.8.2007

Bishan Dass Chela Sewa Dass ...Petitioner

Versus

Gram Panchayat of village Bakhtari and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Mr. Amarjeet Markan, Advocate,
for the petitioner.

Mr. J.S. Bhandol, Advocate, for
the respondent.

K.S.GAREWAL, J.

Bishan Dass chela Sewa Dass has through this petition under Articles 226/227 of the Constitution of India, challenged the proceedings against him filed by Gram Panchayat, Bakhtari, under the provisions of Section 7 of the Punjab Village Common Lands Act, 1961 (hereinafter referred to as **the Act**).

The main contestants are Bishan Dass and the Gram Panchayat. In the application filed on July 22, 1980, the Gram Panchayat pleaded that Bishan Dass had illegally taken possession of the land in dispute, he was in

unauthorized possession and had no legal right to retain the possession. He was liable to be evicted from the land and also liable to pay damages for illegal use and occupation. The panchayat relied upon the jamabandi for the year 1976-77 in which it was recorded as the owner, Jamadar Singh was recorded as gair marusi awal and Bishan Dass as gair marusi doyam. In the column of rent, it was recorded billa lagan.

The defence pleaded by Bishan Dass was that the Gram Panchayat was not the owner of the land in dispute. The land was owned by proprietory body and during consolidation the land had been allotted to the proprietors of the village, this land was the bachat land and owned by the proprietors. The land did not fall within the purview of Shamlat Deh. Mutation 374 was forged and fictitious.

District Development and Panchayat Officer (DDPO) exercising the powers of Collector dismissed the application holding that the Gram Panchayat was not the owner. This order was passed on April 2, 1981 and is Annexure P/5. In the appeal filed by the Gram Panchayat before the Commissioner, the Collector's order was set aside on September 8, 1982 and it was held that the Gram Panchayat has been entered as owner in the column of ownership while Bishan Dass's name was recorded in the column of cultivation. In column 11, rent was mentioned. These entries clearly established that the Gram Panchayat was the owner and the respondent was the tenant. Since the respondent has not been able to show that the lease was still subsisting rather he had claimed to be owner having purchased the land from Jamadar Singh, he had failed to explain how Jamadar Singh was the owner. It was held that the ownership was of the Gram Panchayat.

The learned counsel for the petitioner has argued that the Commissioner could not return a finding in favour of the Gram Panchayat without any concrete evidence to show how the land had come to vest in the Gram Panchayat. In this respect, reliance has been placed on a single Bench decision of this Court in Bachna (Died) through LRs versus Gram Panchayat, Mehmoodpur Jattan and others 2005 (3) P.L.R. 576. In Bachna's case the matter had been remanded back to the Collector to take a fresh decision after giving the parties opportunities to lead evidence. Reliance was also placed on Inder Singh Versus Gram Panchayat, Bharon and others 2005 (1) R.C.R. (Civil) 774. In Inder Singh's case argument of the petitioner had been that the ejectment application filed by the Gram Panchayat was not maintainable as the land is owned by jumla mushtarka malkan and the petitioner being the proprietor had been in continuous possession for a long time. The Panchayat's application had been dismissed but the appeal filed by the Panchayat was allowed. This Court held that at the time of consolidation, the land was bachat land and after consolidation was owned by jumla mushtarka malkan. Therefore, no title was conferred on the Panchayat. The petition was allowed and the ejectment application was dismissed.

Reliance was also placed on Amar Singh and others Versus Commissioner, Hissar Division and others 2005 (3) R.C.R. (Civil) 52. In Amar Singh's case the land was entered as shamlat panna kapooran hasab rasad rakba khewat in 1946 but in 1980 it was shown to be ownership of Gram Panchayat. The Court held that it was incumbent upon the authorities to determine whether the land was shamlat deh or was of the proprietors of the village and also find out whether the land vested in Gram Panchayat or

not. The petition was allowed and the matter was remanded back.

Lastly, reliance was placed on Amar Singh (Died) through LRs. Versus State of Punjab and others 2005 (1) P.L.R. 570, which decision was also in the same lines.

The Collector's order in the present case is quite clear and categoric that although there was presumption of truth attached to jamabandi entries, the presumption was a rebuttable one. The Gram Panchayat had failed to establish that Khasra 154 was a part of old Khasra 225. The Mutation was not on the record. From this the Collector concluded that the mutation was not accepted or sanctioned because only sanctioned mutations are taken on the record. The proceedings book relating to Killa 225 out of which new Khasra 154 had been carved out did not find mention in the minute book relating to Shamlat land. Furthermore, the Panchayat had failed to prove whether the land was given on rent as no proceedings had been placed on record.

It is quite clear that the respondent-Panchayat had relied simply on the jamabandi entry which are in any case rebuttable. In the present case, the petitioner successfully rebutted the presumption of correctness to the jamabandi entry. The Commissioner set aside the Collector's order without examining the facts in detail.

The petitioner had filed a copy of statement of Sukhdev Singh, who produced the consolidation record. Sukhdev Singh' statement describes the entire consolidation proceedings. He stated that Khewat 39 was recorded in Khatuni 210 to 213 measuring 749 Bighas 1 Biswa as Shamlat Deh Hasab Hisas Mundrja Shijra Nasab in the column of ownership and Makbooz Malkan in the column of cultivation. There was

also Khewat 40 which related to two water courses and the area was 2 Bighas 3 Biswas. Except the above, there was no shamlat deh or any other shamlat prior to consolidation. Khasras 39 and 40 had been partitioned amongst all the land owners in proportion to their individual khewats. In the haqdarwar register at item 4, Jamadar and his brothers were allotted 87 Bighas 16 Biswas and this area had been added to the area in their ownership. All the area had been distributed amongst all the right-holders. An area of 164 bighas 14 biswas had been left for common purposes as shamlat. In item 5, killa 130 to 157 were marked as charand, khasra 154 was re-numbered as 225. Sukhdev Singh specifically stated that no area had been shown in the ownership of Panchayat. Khasra 154 measuring 68 Bighas 5 Biswas was shown as Shamlat Deh Hasab Hisas Mundraja Shijra Nasab Malkan in the column of ownership and recorded as Makbooza Malkan in the column of cultivation. However, Khasra 225 of which the main khasra was 154 had not been allotted to anybody. It was on basis of Sukhdev Singh statement that the Collector had come to the conclusion that the land in question was not proved to be owned by the Panchayat. Before consolidation Khasra 154 comprised of old Khasra 548, 876, 577 min. Theses numbers had not been allotted to the Panchayat either in the shape of Panchayat land or Gair Mumkin land.

From the above, it stood proved that the Collector's view was the correct one. It was wrongly brushed aside by the Commissioner without going into the evidence of Sukhdev Singh and the reasons recorded by the Collector.

For the reasons afore-stated, this petition is allowed, the order of the Commissioner dated September 8, 1982 (Annexure P/6) is hereby set

aside and the order of the Collector dated April 2, 1982 (Annexure P/5) is restored.

August 2007 **(K.S. GAREWAL)**
prem **JUDGE**